IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1476 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
BHIKHAJI CHEHARAJI THAKOR - Opponent(s)

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Appearance :
MS DS PANDIT, ADDL. PUBLIC PROSECUTOR for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 15/10/2007

ORAL JUDGMENT

1. Heard Ms. D.S.Pandit, learned APP appearing for the State.

2. Present appeal is filed under section 377 of the

Code of Criminal Procedure and the appellant – State has prayed for enhancement of the sentence imposed by the learned Trial Judge for the offence punishable under section 304 Part – II of Indian Penal Code imposing 5 years' rigorous imprisonment to respondent - orig. accused No.1, author of fatal blow, as the same is inadequate and therefore, the appeal may be admitted and an appropriate enhanced punishment may be imposed.

3. On careful reading of the judgment under challenge, it is clear that the deceased and the accused No.1 – Bhikhaji Chehraji Thakor were serving with one employer – master – Sammatkhan Nasirkhan Pathan and both were drivers; and there was some exchange of words and a matter of excitement between them, when one had offered tea to the another. At that time, both of them were asked to maintain peace and were separated. It is alleged that thereafter at about 8.00 p.m. again a small quarrel took place and the accused No.1 gave a blow with iron rod, which is popularly known as “Tomy” on the head of the

victim-deceased and the victim-deceased sustained injury with the said hard and blunt substance.

4. The learned Trial Judge has considered various aspects while deciding the elements of guilt, because, ultimately, the respondent – accused was asked to face the charge of offence punishable under section 302 of the Indian Penal Code. On appreciation of evidence, the learned Trial Judge found that looking to the relations inter-se between the victim and the accused; time of offence; place of offence; the alleged motive; number of injuries found on the body of the person - deceased; and initial explanation given by material witness as to the cause of injuries sustained, it is held that the offence would fall in the category of culpable homicide not amounting to murder. It is also clear that the deceased had no injuries other than a single blow that was given on the head by the present respondent-accused. The learned Trial Judge has rightly, indirectly, observed that the case

would not fall in the category of case punishable under section 304 Part – I of the IPC. Even otherwise, present appeal is not an appeal against the order of acquittal. The prayer of the State is that rigorous imprisonment for 5 years imposed by the learned trial Court is inadequate and therefore, the accused may be sentenced appropriately by enhancing the period of substantive sentence or by enhancing the amount of fine.

5. In response to the query raised by the Court, Ms. Pandit, learned APP, fairly accepted that from the P.M. Note, it is clear that the deceased was given one single blow and the initial version of one of the witnesses, who had taken the injured to the doctor, was that the victim-deceased had fallen from the motor truck – lorry – truck, which he was driving. In this background of the fact situation, I am of the view that this is not a case where the quantum of punishment imposed by the learned Trial Judge can be said to be inadequate.

6. It is settled that the decision of quantum of punishment is mainly a matter of discretion of the Court and unless the Court finds that the punishment imposed is grossly inadequate and the said inadequacy is likely to take wrong message to the society and also would frustrate the victims of crime, only then the Court should enhance the period of punishment. This is not a case of imposition of punishment for the period less than minimum prescribed. As such, no minimum punishment is prescribed for the offence under section 304 Part – II and in number of cases this Court as well as the Hon'ble Apex Court has imposed even lesser punishment than rigorous imprisonment of 5 years and present case falls in the case punishable under section 304 Part – II, so it is not possible to accept detailed submissions made by the learned APP that this appeal is worth admission.

7. In view of the above, present appeal is dismissed in limine.

(C.K.Buch, J.)

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